IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

RP.No. 903 of 2007(Y)

AGAINST THE JUDGEMENT IN WPC.24565/2006 Dated 06/12/2006

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REVIEW PETITIONERS/NOT MADE PARTIES IN WPC

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1. SHAJI MATHEW,
   MADAPALLYMATTAM HOUSE, MOOZHOOR PO,
   KOTTAYAM DISTRICT.

2. TOMY MATHEW,
   MADAPALLYMATTAM HOUSE, MOOZHOOR PO,
   KOTTAYAM DISTRICT.

3. BABU CHERIAN,
   VADAKKEL HOUSE,
   MUTTOM P.O.,
   IDUKKI DISTRICT.

4. SABU MATHEW,
   MADAPALLYMATTAM HOUSE,
   MOOZHOOR PO., KOTTAYAM DISTRICT.

BY ADV. SRI.SHAJI THOMAS PORKKATTIL
SRI.BINU PAUL

RESPONDENTS: PETITIONERS & RESPONDENTS IN WPC

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1. MATHAICHAN MATHEW, S/O.MATHEW,
   MADAPALLY MATTATHIL, MOOZHOOR PO.,KUTTICKAL,
   KANJIRAPPALLY, KOTTAYAM, NOW R/A JUBILEE,
   SAUDI ARABIA,REP.BY HIS P/A HOLDER,ZAKARIA MATHEW,
   SENZO ENGINEER (PVT) LTD. 302-A, EVENING STAR,
   RAHEJA VIHAR COMPLEX,ANDHERI EAST, MUMBAI.

2. ZAKARIA MATHEW,
   SENZO ENGINEER (PVT) LTD.,302-A,
   EVENING STAR, RAHEJA VIHAR COMPLEX,
   ANDHERI EAST, MUMBAI.

3. SECRETARY,
HOME DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

4. DIRECTOR GENERAL OF POLICE,
THIRUVANANTHAPURAM.

5. N.RAMACHANDRAN,
DY.SUPERINTENDENT OF POLICE,
ADMINISTRATION, KOTTAYAM.

6. CENTRAL BUREAU OF INVESTIGATION,
NEW DELHI, REPRESENTED BY THE SUPERINTENDENT OF POLICE, KATHRUKADAVU,
KOCHI- 682 017.

BY ADV. SRI.S.SREEKUMAR, SC FOR CBI
SRI.PIRAPPANCODE V.S.SUDHEER
PUBLIC PROSECUTOR

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 17/10/2007, THE COURT ON 23/10/2007 PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

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R.P.NO. 903 OF 2007

IN

W.P.(C)NO. 24565 OF 2006

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DATED THIS THE 23rd October 2007

ORDER

The review petitioners are the accused in R.C. 30(S)/06/CBI re-registered by the C.B.I.with respect to Crime No. 96/2003 of Kanjirappally police station which was being investigated by the special investigation team of Gandhi Nagar police station and subsequently taken over by the C.B.I. as per the order of this Court in W.P.(C)No.24565/2006 dated 6-12-2006. It is the case of the petitioners that they were not made parties in the above proceedings and by misleading this Court the petitioners in the above writ petition managed to get an order from this Court to have Crime No.96/2003 of Kanjirappally police station investigated by the CBI. It is contended that in fact the first petitioner in the writ petition was not the de facto complainant as is mentioned in the order and further the matter related to only a family dispute among the brothers and entrusting the CBI to conduct investigation in such a minor matter was the result of misrepresentation at the instance of the writ petitioners. It is pointed out that the CBI is constituted for investigating only high profile crimes and not minor family matters. Hence, the petitioner has

sought for getting the order in the writ petition reviewed and recalled the direction made in the writ petition directing the C.B.I. to take over investigation in Crime No. 96/2003.

2. Respondents 1 and 2, who are the writ petitioners, have filed a counter disputing the allegations and contending that the petitioners herein who are the accused have no role in the writ petition filed to entrust the investigation with the C.B.I. It is settled law that the accused need not to be heard and that the accused has no locus standi in such proceedings. It is pointed out that the complainant-Co-operative Bank had filed the complaint. The first respondent actually is in the position of the de facto complainant as the allegation is that the first petitioner herein impersonating as the first respondent cheated the first respondent as well as the Bank. It is only on account of the fact that the documents are seen executed in the name of the first respondent by the first petitioner herein, which is the result of forgery, the Bank formally implicated the first respondent as well. In view of the above facts of the case which was laid bare before this Court, the court describing the first respondent as the de facto complainant is not the result of any misrepresentation. It is also pointed out that since the order in the writ petition, much time has

elapsed and the CBI is on the verge of completing the investigation and filing the final report. It is also pointed out that only the C.B.I. is the equipped to conduct the investigation with respect to the particular allegations involved, i.e. forging the emblem and seal of the Attachee, Embassy of India, Riyad. It would not be feasible for the special investigation team of the Kerala police to ascertain the true state of affairs from the Embassy situated abroad. It is also pointed out that the petitioner has moved the Supreme Court over the order in the writ petition by filing a special leave petition which has been dismissed as per the order of the Supreme Court dated 23-8-2007, the copy of which is produced as Annexure-R2(a). Hence also the review petition is not maintainable.

3. At the time of hearing counsel for the review petitioners have pointed out that it was the same counsel who appeared for the C.B.I. in the writ petition and who did not oppose the application of the writ petitioners, that represented the writ petitioners in the earlier proceedings of the same matter before this Court which is evident from Exts.P8, P10 and P13 proceedings, i.e. W.P.(C)No.31824/2004, Crl.R.P.No.628/2005 and W.P.(C)No.7168/2006. Hence, according to him, it was mainly on account of the attitude of the counsel for the

C.B.I. who was the counsel for the writ petitioners in the earlier proceedings in the same matter that the court was misled to ordering the C.B.I. investigation. I find that the above fact that it is the same counsel who represented the petitioners in the earlier proceedings who also be represented the C.B.I. in the writ petition is not disputed. Of course, the particular counsel should not have represented the C.B.I. in the writ petition which was somewhat unethical. But I find that on the above ground the order of this Court dated 6-12-2006 in the writ petition entrusting to the investigation to the C.B.I. is not to be reviewed. The order is a considered one. I find that it is particularly mentioned therein that the allegations involved which was a subsequent development of the case, required the investigation by the C.B.I. which alone is having the infrastructure to conduct the investigation abroad. It has also to be noted that months have elapsed since the date of the order in the writ petition. It is also submitted that the investigation is over and the C.B.I. is about to file the final report.

4. In the circumstances and in view of the fact that there is no defect in the order of this Court in the writ petition, I find that the review petition cannot be sustained. All the same, it is made clear that

the petitioners would be entitled to resort to reliefs available as per the Code of Criminal Procedure to challenge the veracity of the investigation and the final report filed in appropriate proceedings. The review petition is dismissed.

Sd/-
K.R.UDAYABHANU, JUDGE

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TRUE COPY

P.S. TO JUDGE